

STATE OF ARIZONA

JUN 13 1996

DEPARTMENT OF INSURANCE DEPT. OF INSURANCE
BY KHX

In the Matter of the Withdrawal of:) Docket No. 96A-039-INS
ALEXCO LIFE INSURANCE)
COMPANY (NAIC No. 76864)) ORDER
Petitioner.)
_____)

On June 7, 1996, the Office of Administrative Hearings, through Administrative Law Judge Lewis D. Kowal submitted "Recommended Findings of Fact, Conclusions of Law and Recommended Order Authorizing Withdrawal of Insurer from the Insurance Business and for a Release of Statutory Deposit", a copy of which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance has reviewed the recommendation, and enters the following order:

1. The recommended findings of fact and conclusions of law are adopted.
2. The Petitioner may file its Articles of Dissolution with the Arizona Corporation Commission.
3. The Petitioner is entitled to the release of its statutory deposit in the sum of \$100,000.00 and that the statutory deposit shall be released to the Petitioner after the Department has received the following: (a) payment of examination expenses, if due; (b) payment of \$323.84 to the IERF; (c) payment to the Department of \$3,375.00 plus the penalties due the Department which have accrued and continue to

1 accrue at the rate of \$10.00 per day until Petitioner pays the
2 Department the \$3,375.00 certificate of authority renewal fee;
3 (d) a copy of Petitioner's Articles of Dissolution certified as
4 filed by the Arizona Corporation Commission; and (e) a fully
5 executed Form El26 (Notice of Trust Deposit Release). The
6 statutory deposit cannot be released until the Department
7 receives a fully executed copy of the official State Treasurer
8 Release Receipt.

9 4. The sum of \$100.00 previously credited to the
10 IERF will be refunded to the Petitioner, pursuant to A.R.S.
11 §20-159.

12 5. The Petitioner will file its 1995 Annual Statement
13 with the Department, together with all applicable fees, and a
14 certified copy of the Articles of Dissolution having a stamped
15 file date of March 31, 1996, or a prior date of filing with the
16 Arizona Corporation Commission, or the Petitioner will be
17 responsible for any certificate of authority renewal fee.

18 6. The Petitioner will file its 1996 Annual Statement
19 with the Department, together with all applicable fees, unless
20 Petitioner files its Article of Dissolution with the Arizona
21 Corporation Commission on or before December 31, 1996.

22 NOTIFICATION OF RIGHTS

23 The aggrieved party may request a rehearing with
24 respect to this Order by filing a written petition with the
25 Office of Administrative Hearings within 30 days of the date of
26 this Order, setting forth the basis for such relief pursuant to
27 A.A.C. R20-6-114(B).
28

1 The final decision of the Director may be appealed to
2 the Superior Court of Maricopa County for judicial review
3 pursuant to A.R.S. §20-166.

4 EFFECTIVE this 12th day of June, 1996

5
6 Chris Herstam
7 Chris Herstam
8 Director of Insurance

9 A copy of the foregoing
10 mailed this 13th day of
11 June, 1996

12 Charles R. Cohen, Deputy Director
13 Gregory Y. Harris, Executive Assistant Director
14 Mary Butterfield, Assistant Director
15 Catherine O'Neil, Assistant Director
16 Gary Torticill, Assistant Director
17 Deloris Williamson, Assistant Director
18 Scott Greenberg, Business Administrator
19 Rose McNabb, Solvency Support Unit Supervisor
20 Kurt Regner, Examiner
21 Department of Insurance
22 2910 N. 44th St., Suite 210
23 Phoenix, AZ 85018

24 Office of Administrative Hearings
25 1700 West Washington, Suite 602
26 Phoenix, AZ 85007

27 Gerrie Marks
28 Assistant Attorney General
1275 West Washington
Phoenix, AZ 85012

Tom Haney
1421 East Thomas Road
Phoenix, AZ 85014-5722

Katherine Linden

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In the Matter of the Withdrawal of

No. 96A-039-INS

4 **ALEXCO LIFE INSURANCE**
5 **COMPANY (NAIC No. 76864),**

6
7
8 Petitioner.

**RECOMMENDED FINDINGS OF
FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER
AUTHORIZING WITHDRAWAL OF
INSURER FROM THE INSURANCE
BUSINESS AND FOR A RELEASE
OF STATUTORY DEPOSIT**

9
10 On April 23, 1996, a hearing took place at the Arizona Department of
11 Insurance (the "Department"), 2910 North 44th Street, Phoenix, Arizona, to consider
12 the application of Alexco Life Insurance Company (the "Petitioner"), NAIC No. 76864,
13 to withdraw from the insurance business and for the release of its statutory deposit
14 pursuant to A.R.S. §20-588 and A.A.C. R20-6-303. The record of this matter closed
15 on May 15, 1996.

16 Based upon the entire record in this matter, including all pleadings, motions,
17 testimony and exhibits admitted during the hearing of this matter, Administrative Law
18 Judge Lewis D. Kowal has prepared the following Recommended Findings of Fact,
19 Conclusions of Law and Proposed Order for consideration and approval by the
Director:

20 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

21 1. The Petitioner has surrendered its Certificate of Authority to the
Department.

22 2. The Petitioner has filed with the Department certified copies of
23 Resolutions of the Petitioner's Board of Directors and of the Petitioner's
24 shareholder(s) authorizing Petitioner to withdraw from the insurance business by
25 dissolution.

26 3. The Petitioner has no insurance obligations owing to it, whether by
27 policies written direct or by reinsurance ceded to it.

28 4. The Petitioner has filed its certified financial statement as of March 1,
29 1996 with the Department.
30

1 5. At least 10 business days before the hearing of this matter, Petitioner
2 gave special notice to creditors and policyholders of the Petitioner, setting forth the
3 date, place, nature and purpose of the hearing, as evidenced by an affidavit of
4 publication. Petitioner also provided individual notice by mail to its known creditors,
as evidenced by an affidavit.

5 6. The Petitioner has a \$100,000.00 statutory deposit with the Department
6 and a \$100.00 deposit with the Insurance Examiners' Revolving Fund ("IERF").

7 7. The Petitioner has complied with the provisions of A.R.S. §20-588 and
8 with A.A.C. R20-6-303, relating to the release of its \$100,000.00 statutory deposit.

9 8. The Department may have incurred examination expenses as a result of
10 this withdrawal.

11 9. Petitioner currently owes \$323.84 to the IERF and \$3,375.00 to the
12 Department for the 1995 certificate of authority renewal fee plus penalty fees
accruing at the rate of \$10.00 for each day of delinquency as of April 1, 1996.

13 10. On April 22, 1995, the day before the hearing of this matter, Petitioner
14 filed a petition and memorandum in support of nonpayment of renewal fee.

15 11. Petitioner maintains that the Department has long held that the
16 certificate of authority renewal fee was applied to its forthcoming fiscal year July 1
17 1996 through June 30, 1997. Petitioner asserts that the basis for the fiscal year
18 application is derived from A.R.S. §20-167 (G). However, A.R.S. §20-167 only
19 provides for the computation of the rate of revised fees and their applicability from
July 1, 1986 and each July 1 thereafter.

20 12. Petitioner asserts that because it has applied to withdraw from
21 transacting the business of insurance in Arizona and will not be transacting such
22 business by July 1, 1996, Petitioner should not have to pay its 1996 certificate of
23 authority renewal fee. Further, Petitioner contends that because of its good faith
24 argument, no penalty fee should be assessed against it for nonpayment of the
renewal fee.

25 13. According to the Department, prior to 1979, A.R.S. §20-217 used to
26 refer to the expiration of the certificate of authority each June 30 unless renewed.
27 However, in 1979, the legislature repealed A.R.S. §20-217 in its entirety and enacted
28 a new A.R.S. §20-217 which does not contain any reference to the fiscal year or any
29 other date. Therefore, the Department argues that by reading A.R.S. §§20-217, 20-
30 223 and 20-167 together, it is necessarily implied that the period to which the
certificate of authority renewal fee applies has changed from the fiscal year to March
31.

14. Petitioner's contentions concerning the certificate of renewal fee are unsupported. A.R.S. §§20-167, 20-217 and 20-223 when read together leads to a determination that the certificate of authority renewal fee covers the period April 1 to March 31 which is the time by which an insurer must file its Annual Statement and pay its renewal fee pursuant to A.R.S. §20-223.. There is no exception within that statute for an insurer who withdraws from transacting insurance prior to the forthcoming July 1.

15. A.R.S. § 20-223(A) provides for the filing of a certificate of authority renewal fee. A.R.S. §20-223(D) provides the Director with the authority to impose a penalty up to \$25.00 per day for nonpayment of any fees pursuant to that section. Therefore, a penalty of up to \$25.00 per day could be imposed by the Director for an insurer's non-payment of a certificate of authority renewal fee.

16. A.R.S. §20-217 provides the Director with the authority to suspend or revoke an insurer's certificate of authority if the insurer fails to pay a certificate of authority renewal fee by March 31 as provided in A.R.S. §20-223

17. A.R.S. §20-167(B) provides that "no refund should be allowed for any unused portion of a fee nor shall fees be prorated."

RECOMMENDED ORDER

The undersigned Administrative Law Judge recommends that:

1. The Petitioner may file its Articles of Dissolution with the Arizona Corporation Commission.

2. The Petitioner is entitled to the release of its statutory deposit in the sum of \$100,000.00 and that the statutory deposit shall be released to the Petitioner after the Department has received the following: (a) payment of examination expenses, if due; (b) payment of \$323.84 to the IERF; (c) payment to the Department of \$3,375.00 plus the penalties due the Department which have accrued and continue to accrue at the rate of \$10.00 per day until Petitioner pays the Department the \$3,375.00 certificate of authority renewal fee; (d) a copy of Petitioner's Articles of Dissolution certified as filed by the Arizona Corporation Commission; and (e) a fully executed Form E126 (Notice of Trust Deposit Release). The statutory deposit cannot be released until the Department receives a fully executed copy of the official State Treasurer Release Receipt.

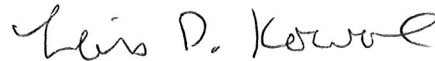
3. The sum of \$100.00 previously credited to the IERF be refunded to the Petitioner, pursuant to A.R.S. §20-159.

4. The Petitioner file its 1995 Annual Statement with the Department, together with all applicable fees, and a certified copy of the Articles of Dissolution

1 having a stamped file date of March 31, 1996, or a prior date of filing with the Arizona
2 Corporation Commission, or the Petitioner will be responsible for any certificate of
3 authority renewal fee.

4 5. The Petitioner file its 1996 Annual Statement with the Department,
5 together with all applicable fees, unless Petitioner files its Article of Dissolution with
6 the Arizona Corporation Commission on or before December 31, 1996.

7 Done this 7th day of June, 1996.

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10 

11 LEWIS D. KOWAL
12 Administrative Law Judge

13 COPY of the foregoing mailed/delivered
14 this 10th day of June, 1996, to:

15 Chris Herstam, Director
16 Arizona Department of Insurance
17 2910 North 44th Street, Suite 210
18 Phoenix, AZ 85018

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